

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton; and  
Robert G. Taub

Lodi Post Office  
Lodi, Texas

Docket No. A2012-26

ORDER REMANDING DETERMINATION

(Issued February 8, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”<sup>1</sup> The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly, the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

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<sup>1</sup> United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

The Postal Service's Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service's request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On October 20, 2011, Tammy Cornett (Petitioner Cornett) filed a petition with the Commission seeking review of the Postal Service's Final Determination to close the Lodi, Texas post office (Lodi post office).<sup>2</sup> An additional petition for review was received from Robert Calhoun (Petitioner Calhoun).<sup>3</sup> For the reasons discussed below, the Final Determination to close the Lodi post office is remanded.

## II. PROCEDURAL HISTORY

On October 27, 2011, the Commission established Docket No. A2012-26 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.<sup>4</sup>

On November 4, 2011, the Postal Service filed the Administrative Record with the Commission.<sup>5</sup> A corrected version of the Administrative Record was filed on November 2, 2011.<sup>6</sup> The Postal Service also filed comments requesting that the Commission affirm its Final Determination.<sup>7</sup>

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<sup>2</sup> Petition for Review received from Tammy Cornett regarding the Lodi, Texas post office 75564, October 20, 2011. (Cornett Petition).

<sup>3</sup> Petition for Review received from Robert Calhoun regarding the Lodi, Texas post office 75564, November 7, 2011 (Calhoun Petition).

<sup>4</sup> Order No. 931 Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 27, 2011.

<sup>5</sup> United States Postal Service Notice of Filing of Administrative Record, November 4, 2011.

<sup>6</sup> United States Postal Service Notice of Filing Corrected Administrative Record-Errata, November 22, 2011 (Administrative Record). The Administrative Record was subsequently supplemented with a page that had been mistakenly omitted. United States Postal Service Notice of Supplemental Filing, December 12, 2011. The Administrative Record includes, as Item No. 47, the Final Determination to Close the Lodi, TX Post Office and Establish Service by Rural Route Service (Final Determination).

<sup>7</sup> United States Postal Service Comments Regarding Appeal, December 15, 2011 (Postal Service Comments).

Petitioner Cornett filed a participant statement supporting her petition.<sup>8</sup> Petitioner Calhoun filed a participant statement supporting his petition.<sup>9</sup> The Public Representative did not file comments or a reply brief.

### III. BACKGROUND

The Lodi post office provides retail postal services and service to 81 post office box or general delivery customers. Final Determination at 2. No delivery customers are served through this post office. The Lodi post office, an EAS-55 level facility, provides retail service from 7:30 a.m. to 12:00 p.m. and 1:00 p.m. to 3:30 p.m., Monday through Friday, and is closed on Saturday. Lobby access hours are 24 hours daily, Monday through Saturday. *Id.*

The postmaster position became vacant on September 30, 2007 when the Lodi postmaster retired. A non-career officer-in-charge (OIC) was installed to operate the post office. Retail transactions average 13 transactions daily (15 minutes of retail workload). Post office receipts for the last 3 years were \$8,861 in FY 2008; \$8,042 in FY 2009; and \$7,456 in FY 2010. There was one permit or postage meter customer. *Id.* By closing this post office, the Postal Service anticipates savings of \$44,349 annually. *Id.* at 8.

After the closure, retail services will be provided by the Jefferson post office located approximately 9 miles away.<sup>10</sup> *Id.* at 2. Delivery service will be provided by rural carrier to cluster box units (CBUs) through the Jefferson post office. The Jefferson post office is an EAS-18 level post office, with retail hours of 8:00 a.m. to 4:00 p.m., Monday through Friday, and is closed on Saturday. One-hundred-ninety (190) post

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<sup>8</sup> Participant Statement received from Tammy Cornett, November 22, 2011 (Cornett Participant Statement).

<sup>9</sup> Participant Statement received from Robert Calhoun, November 28, 2011 (Calhoun Participant Statement).

<sup>10</sup> MapQuest estimates the driving distance between the Lodi and Jefferson post offices to be approximately 10.1 miles (14 minutes driving time). MapQuest estimates the driving distance between the Lodi and the Kildare post offices to be approximately 5.5 miles (7 minutes driving time).

office boxes are available. *Id.* The Postal Service will continue to use the Lodi name. *Id.* at 2, Concern No. 2.

#### IV. PARTICIPANT PLEADINGS

*Petitioners.* Petitioners oppose the closure of the Lodi post office. Petitioner Cornett argues that the Postal Service “targets” rather than “studies” post offices for closure, and that it does not follow its own rules during the closure process. Cornett Petition at 1. In her participant statement, she elaborates on these points and further argues that the Administrative Record is rife with errors and inconsistencies. See *generally* Cornett Participant Statement at 1-7. She calculates that the projected economic savings are incorrectly determined. *Id.* at 8-10. She states that closing the Lodi post office will have a negative effect on both the community and the sole postal employee. *Id.* at 11.

Petitioner Calhoun argues that the projected economic savings are inaccurate. Calhoun Petition at 1; Calhoun Participant Statement at 5-7. He also states that the decision to close the Lodi post office because of a postmaster vacancy is “bogus,” since the Postal Service is responsible for hiring a postmaster. Calhoun Petition at 2; Calhoun Participant Statement at 6. He states that the Kildare post office, noted by the Postal Service as an alternative retail outlet for the Lodi community, is also slated for closure. Calhoun Participant Statement at 6. Finally, he is concerned that the closure of the Lodi post office will inhibit the business and community growth of Lodi. *Id.* at 7.

*Postal Service.* The Postal Service argues that the Commission should affirm its determination to close the Lodi post office. Postal Service Comments at 2. The Postal Service believes the appeal raises four main issues: (1) the effect on postal services; (2) the impact on the Lodi community; (3) the economic savings expected to result from discontinuing the Lodi post office; and (4) the impact upon postal employees. *Id.* The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Lodi post office should be affirmed. *Id.* at 22.

The Postal Service explains that its decision to close the Lodi post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low and decreasing office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- no projected population, residential, commercial or business growth in the area;
- minimal impact on the community; and
- expected financial savings.

*Id.* at 6. The Postal Service contends that it will continue to provide regular and effective postal services to the Lodi community when the Final Determination is implemented. *Id.*

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioners regarding the effect on postal services, the effect on the Lodi community, economic savings, and the effect on postal employees. *Id.* at 2. Specifically, the Postal Service dismisses Petitioner Cornett's allegations of errors and inconsistencies, noting that administrative records naturally show differences when originals are updated, and in any event, Petitioner Cornett's claims do not rise to the level of substantial, credible Administrative Record evidence. Postal Service Comments at 6.

## V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be

(a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

This proceeding presents a situation requiring a remand to the Postal Service. In her participant statement, Petitioner Cornett states that the Administrative Record filed by the Postal Service in this proceeding differs from the Administrative Records posted at both the Lodi and Jefferson post offices. Cornett Participant Statement at 4. Information presented in several items contained in the Administrative Record on file with the Commission differs from information presented in the Administrative Records posted at the two post offices. See, *id.* at 4-5. Petitioner Cornett states further that the Administrative Record on file with the Commission contains documents not found in the two posted Administrative Records. *Id.* at 4. In that connection, she alleges that the Administrative Records posted at the Lodi and Jefferson post offices contain 186 pages. *Id.* at 8. By contrast, the Administrative Record filed at the Commission contains over 290 pages. See Administrative Record.

It appears that one reason for the disparities described above is that a revised proposal to discontinue the Lodi post office was issued during the comment period for the proposal posted on June 16, 2011.<sup>11</sup> Whereas the original Proposal limited replacement service to rural route service, the revised Proposal added service to CBUs. Administrative Record, Item No. 41 at 2.

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<sup>11</sup> Proposal to Close the Lodi, TX Post Office and Establish Service by Rural Route Service (Revised), Administrative Record, Item No. 41 (revised Proposal). According to the Index of Official Record accompanying the Administrative Record, the revised Proposal was issued on July 18, 2011. Administrative Record, Index of Official Record at 2, Item No. 41.

The issuance of the revised Proposal presents several problems. First, it appears that the revised Proposal was never posted at the affected post offices.<sup>12</sup> Second, and more importantly, the revised Proposal was issued on July 18, 2011, which was half-way through the original 60-day comment period.<sup>13</sup> With this change, it was incumbent on the Postal Service to repost its proposal to close the Lodi post office. Its failure to do so is inconsistent with the requirement in 39 U.S.C. § 404(d)(1) that customers be given 60 days in which to present their views as well as the Postal Service's Handbook for post office discontinuances.<sup>14</sup>

The revision to the initial Proposal was not inconsequential. Section 35 of the Postal Service Handbook specifically addresses this type of change, stating that “a significant change...in the original proposal, (e.g., a change in the proposed type of alternative service)” requires a reposting “with an invitation for comments for a new 60-day posting period.” Postal Service Handbook, § 353. Furthermore, from both the Final Determination and the allegations of Petitioner Cornett it appears that the viability of rural route service was open to question in light of the condition of roads that rural carriers would be called upon to use. See Final Determination at 4, Concern No. 16; Cornett Participant Statement at 5. Moreover, a question remains regarding whether the location identified by the Postal Service for installation of CBUs will, in fact, be available. Compare Administrative Record, Item No. 15 at 2 (parking lot of the Lodi post office) with Cornett Participant Statement at 5 (statement that parking lot of Lodi post office is not available).

Because the change in replacement services was significant, the Postal Service, as required by 39 U.S.C. § 404(d)(1) and section 35 of Handbook PO-101, should have

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<sup>12</sup> Inspection of the revised Proposal reveals no round-date stamps. Moreover, although the Postal Service acknowledges that the revised Proposal was issued, it refrains from stating that the revised Proposal was ever posted. See Postal Service Comments at 5.

<sup>13</sup> The comment period for the original proposal began on June 16, 2011 and ended on August 17, 2011. Administrative Record, Item No. 36 at 1; Item No. 37 at 10, 12.

<sup>14</sup> Handbook PO-101, Post Office Discontinuance Guide, August 2004, updated with *Postal Bulletin* revisions through August 2, 2007 (Postal Service Handbook).

renoticed its proposal to close the Lodi post office.<sup>15</sup> The failure to do so truncated customers' 60-day comment period mandated by section 404(d)(1) and denied customers an opportunity to inform the Postal Service about any concerns they might have had regarding the alternative of CBUs before the Final Determination was posted on September 26, 2011. See Administrative Record, Item 47, at 1.

This case demonstrates the importance of the procedures in post office closing cases. Observance of those procedures is necessary to insure the development of an adequate and reliable Administrative Record—an Administrative Record that includes customer comments on the actual proposal being considered; an Administrative Record that provides the Postal Service with the information needed to make an informed decision; and an Administrative Record that can be relied upon by the Commission in reviewing the Postal Service's decision.

On the facts presented here, the Commission cannot conclude that the Postal Service has satisfied 39 U.S.C. § 404(d). Accordingly, the determination to close the Lodi post office is remanded to the Postal Service for further consideration. In light of this remand, the Commission finds it unnecessary to address other issues related to the appeal.

*It is ordered:*

The Postal Service's determination to close the Lodi, Texas post office is remanded.

By the Commission.

Shoshana M. Grove  
Secretary

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<sup>15</sup> It should also be noted that the proposal to employ CBUs required changes in the Postal Service's economic analysis. In issuing the revised Proposal, some of the changes were made and others were not. See Cornett Participant Statement at 4-5. On remand, all such changes must be incorporated into the Administrative Record.